

105TH CONGRESS  
1ST SESSION

# H. CON. RES. 125

Expressing the sense of the Congress that each State should enact legislation regarding notification procedures necessary when a sexually violent offender is released.

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## IN THE HOUSE OF REPRESENTATIVES

JULY 25, 1997

Mr. GUTKNECHT (for himself, Mr. LAMPSON, Mr. DEAL of Georgia, Mr. WALSH, Mr. FROST, Mr. HORN, Ms. PRYCE of Ohio, Mr. LIPINSKI, Mr. DIAZ-BALART, Mr. NEY, Mr. PETERSON of Minnesota, Mr. MCINTOSH, Ms. MOLINARI, Mr. DAVIS of Virginia, Ms. STABENOW, Mr. SCHIFF, Mr. LUTHER, Mr. BALDACCI, Mr. BENTSEN, Mr. FAZIO of California, Mr. DEUTSCH, Ms. LOFGREN, Mrs. ROUKEMA, Mrs. KELLY, Ms. CARSON, Mr. CRAMER, Mr. SANDLIN, Ms. MILLENDER-MCDONALD, Mr. CASTLE, Mr. UNDERWOOD, Mr. GRAHAM, and Mr. FOX of Pennsylvania) submitted the following concurrent resolution; which was referred to the Committee on Judiciary

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## CONCURRENT RESOLUTION

Expressing the sense of the Congress that each State should enact legislation regarding notification procedures necessary when a sexually violent offender is released.

Whereas States are now required to release certain relevant information to protect the public from sexually violent offenders; and

Whereas many States have not established guidelines regarding the notification and release of a sexually violent offender: Now, therefore, be it

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1       *Resolved by the House of Representatives (the Senate*  
 2 *concurring)*, That it is the sense of the Congress that each  
 3 State should enact legislation based on the following  
 4 model:

5       **SECTION 1. ESTABLISHMENT OF ADVISORY BOARD FOR**  
 6               **RISK ASSESSMENT.**

7       (a) **ESTABLISHMENT.**—The State shall establish an  
 8 Advisory Board for Risk Assessment (referred to in this  
 9 Act as the “Board”) which consists of not less than 5  
 10 members appointed by the Chief Executive Officer of the  
 11 State.

12       (b) **DUTIES.**—The Board shall comply with the re-  
 13 quirements and guidelines established for a State board  
 14 under section 170101 of the Violent Crime Control and  
 15 Law Enforcement Act of 1994 and the provisions of this  
 16 Act.

17       (c) **MEMBERSHIP.**—Each member shall, by experi-  
 18 ence or training, have a personal interest or professional  
 19 expertise in law enforcement, crime prevention, victim ad-  
 20 vocacy, criminology, psychology, parole, public education,  
 21 or community relations.

22       (d) **TERM.**—The term of office of each member of  
 23 such Board shall be determined by the Chief Executive  
 24 Officer of the State in guidelines issued pursuant to this  
 25 section.

1 (e) VACANCY.—Any member chosen to fill a vacancy  
 2 occurring other than by expiration of a term shall be ap-  
 3 pointed for the remainder of the unexpired term.

4 (f) CHAIRPERSON.—The Chief Executive Officer of  
 5 the State shall designate 1 of the members of the Board  
 6 as chairperson to serve in such capacity at the pleasure  
 7 of the Officer or until the member's term of office expires  
 8 and a successor is designated in accordance with law,  
 9 whichever occurs first.

10 (g) TERMINATION.—Any member of the Board may  
 11 be removed by the Chief Executive Officer for cause after  
 12 an opportunity to be heard.

13 (h) QUORUM.—Except as otherwise provided by law,  
 14 a majority of the Board shall constitute a quorum for the  
 15 transaction of all business of the Board.

16 **SEC. 2. GUIDELINES FOR TIER DETERMINATION.**

17 (a) IN GENERAL.—The Chief Executive Officer of the  
 18 State or a designee shall develop guidelines and proce-  
 19 dures for use by the Board to assess the risk of a repeat  
 20 offense by such sex offender and the threat posed to the  
 21 public safety. Such guidelines shall be based upon the fol-  
 22 lowing:

23 (1) Criminal history factors indicative of high  
 24 risk of repeat offense, including—

1 (A) whether the sex offender has a mental  
2 abnormality;

3 (B) whether the sex offender's conduct was  
4 found to be characterized by repetitive and  
5 compulsive behavior, associated with drugs or  
6 alcohol;

7 (C) whether the sex offender served the  
8 maximum term;

9 (D) whether the sex offender committed  
10 the felony sex offense against a child; and

11 (E) the age of the sex offender at the time  
12 of the commission of the first sex offense.

13 (2) Other factors to be considered in determin-  
14 ing risk, including—

15 (A) the relationship between such sex of-  
16 fender and the victims;

17 (B) whether the offense involved the use of  
18 a weapon, violence, or infliction of serious bod-  
19 ily injury;

20 (C) the number, date, and nature of prior  
21 offenses;

22 (D) conditions of release that minimize  
23 risk of another offense, including whether the  
24 sex offender is under supervision, receiving  
25 counseling, therapy or treatment, or residing in

1 a home situation that provides guidance and su-  
2 pervision;

3 (E) physical conditions that minimize risk  
4 of another offense, including advanced age or  
5 debilitating illness;

6 (F) whether psychological or psychiatric  
7 profiles indicate a risk of recidivism;

8 (G) the sex offender's response to treat-  
9 ment;

10 (H) recent behavior, including behavior  
11 while confined;

12 (I) recent threats or gestures against per-  
13 sons or expression of intent to commit addi-  
14 tional offenses; and

15 (J) review of any victim impact statement.

16 (b) INFORMATION TRANSFER.—

17 (1) IN GENERAL.—Notwithstanding any other  
18 provision of law, any State or local correctional facil-  
19 ity, hospital, or institution shall forward relevant in-  
20 formation pertaining to a sex offender to be dis-  
21 charged, paroled, or released to the Board for review  
22 prior to the release or discharge for consideration by  
23 the Board in its recommendations. Information shall  
24 include the commitment file, medical file, and treat-  
25 ment file pertaining to such person.

1           (2)     CONFIDENTIALITY.—All       confidential  
2       records provided under paragraph (1) shall remain  
3       confidential, unless otherwise ordered by a court, by  
4       the lawful custodians of the records, or by another  
5       person duly authorized to release such information.

6   **SEC. 3. BOARD RECOMMENDATIONS.**

7       The Board shall use the guidelines established pursu-  
8   ant to section 2(a) to recommend to an appropriate court  
9   of the State 1 of the following 3 levels of notification:

10           (1) TIER I.—If the risk of a repeat offense is  
11       low, a tier 1 designation shall be given to such sex  
12       offender. In such case the designated law enforce-  
13       ment agency having jurisdiction and the law enforce-  
14       ment agency having had jurisdiction at the time of  
15       his conviction shall be notified in accordance with  
16       section 170101(b)(4) of the Violent Crime Control  
17       and Law Enforcement Act of 1994.

18           (2) TIER II.—If the risk of a repeat offense is  
19       moderate, a tier 2 designation shall be given to such  
20       sex offender. In such case the designated law en-  
21       forcement agency having jurisdiction and the law en-  
22       forcement agency having had jurisdiction at the time  
23       of conviction shall be notified and may notify any  
24       victim of the proposed release of such offender and  
25       any agency, organization, or group, serving individ-

1 uals who have similar characteristics to the previous  
 2 victim or victims of such offender. The notification  
 3 may include the approximate address (by ZIP Code),  
 4 background information relating to the crime, type  
 5 of victim targeted, conviction, including release of a  
 6 photograph of the offender, and any special condi-  
 7 tions imposed on the offender.

8 (3) TIER III.—If the risk of a repeat offense is  
 9 high and there exists a threat to the public safety,  
 10 a tier 3 designation shall be given to such offender.  
 11 In such case, the appropriate law enforcement agen-  
 12 cies shall be notified of such an offender’s release  
 13 and may use the notification procedures described in  
 14 paragraph (2), except that a precise address may be  
 15 released and any relevant information necessary to  
 16 protect the public concerning a specific person re-  
 17 quired to register under section 170101 of the Vio-  
 18 lent Crime Control and Law Enforcement Act of  
 19 1994 shall be released.

20 **SEC. 4. JUDICIAL DETERMINATION.**

21 (a) NOTIFICATION LEVEL.—

22 (1) IN GENERAL.—An appropriate court of the  
 23 State also shall make a determination with respect  
 24 to the level of notification, after receiving a tier rec-  
 25 ommendation from the Board. In making the deter-

1 mination, the court shall review any statement by a  
2 victim or victims and any materials submitted by the  
3 sex offender. The court shall also allow the sex of-  
4 fender to appear and be heard, and inform the sex  
5 offender of the right to have counsel appointed if  
6 necessary.

7 (2) APPEAL.—A sex offender may appeal a de-  
8 termination made by the court made under para-  
9 graph (1) in accordance with State law.

10 (3) NOTIFICATION AND REGISTRATION.—The  
11 filing of the appeal shall not stay the designated law  
12 enforcement agency's notification actions unless the  
13 court orders otherwise. Such petition, if granted,  
14 shall not relieve the petitioner of the duty to register  
15 pursuant to section 170101 of the Violent Crime  
16 Control and Law Enforcement Act of 1994 upon  
17 conviction of an offense requiring registration in the  
18 future.

19 (b) REVERSAL.—Upon the reversal of a conviction of  
20 a sexual offense, the court shall order the expungement  
21 of any records required to be kept pursuant to this Act.

22 **SEC. 5. PENALTY FOR MISUSE OF REGISTRATION INFORMA-**  
23 **TION.**

24 (a) FINE.—Any person who uses information dis-  
25 closed pursuant to this Act in violation of the law shall

1 be fined under title 18, United States Code, or imprisoned  
2 for not more than 5 years, or both.

3 (b) CIVIL ACTION.—The State attorney general, a  
4 district attorney, or any person aggrieved by information  
5 disclosed in violation of the law is authorized to bring a  
6 civil action in the appropriate court requesting preventive  
7 relief, including an application for a permanent or tem-  
8 porary injunction, restraining order, or other order  
9 against the person or group of persons responsible for  
10 such action.

11 (c) ADDITIONAL REMEDIES.—The foregoing rem-  
12 edies shall be independent of any other remedies or proce-  
13 dures that may be available to an aggrieved party under  
14 other provisions of law.

15 **SEC. 6. JUVENILE OFFENDERS.**

16 (a) IN GENERAL.—A juvenile residing in a State who  
17 has been adjudicated delinquent for any sex offense or at-  
18 tempted sex offense, or who has been convicted of any sex  
19 offense or attempted sex offense, or who has been acquit-  
20 ted by reason of insanity for any sex offense or attempted  
21 sex offense shall be required to comply with the registra-  
22 tion requirements established pursuant to section 170101  
23 of the Violent Crime Control and Law Enforcement Act  
24 of 1994.

1 (b) YOUTH FACILITY.—Any person who is discharged  
2 or paroled from a facility in another State that is equiva-  
3 lent to a Department of the Youth Authority to the cus-  
4 tody of such a facility because of the commission or at-  
5 tempted commission of specified sex offenses, is required  
6 to register pursuant to section 170101 of the Violent  
7 Crime Control and Law Enforcement Act of 1994.

8 **SEC. 7. OFFICIAL IMMUNITY FROM LIABILITY.**

9 (a) IMMUNITY.—No official, employee, or agency,  
10 whether public or private, shall be subject to any civil or  
11 criminal liability for damages for any discretionary deci-  
12 sion to release relevant and necessary information pursu-  
13 ant to this section, unless it is shown that such official,  
14 employee, or agency acted with gross negligence or in bad  
15 faith.

16 (b) INFORMATION RELEASE.—The immunity pro-  
17 vided under this section applies to the release of relevant  
18 information to other employees or officials or to the gen-  
19 eral public.

20 (c) FAILURE TO RELEASE INFORMATION.—Nothing  
21 in this section shall be deemed to impose any civil or crimi-  
22 nal liability upon or to give rise to a cause of action  
23 against any official, employee, or agency, whether public  
24 or private, for failing to release information as authorized

1 in this Act unless it is shown that such official, employee,  
2 or agency acted with gross negligence or in bad faith.

3 **SEC. 8. IDENTITY OF THE VICTIM.**

4 Any information identifying the victim by name, birth  
5 date, address, or relation to the registrant shall be ex-  
6 cluded from public access or dissemination.

7 **SEC. 9. GENERAL STATE REQUIREMENTS.**

8 The Chief Executive Officer of a State or designee  
9 shall establish reasonable notification requirements under  
10 this Act, including notification to an offender of any proce-  
11 dures for which the offender is required or is permitted  
12 to participate, including the hearing process, appeal  
13 rights, and submission of information to the Board.

14 **SEC. 10. ADVISORY COUNCIL FOR COMMUNITY EDUCATION.**

15 (a) IN GENERAL.—The Chief Executive Officer of a  
16 State shall appoint a voluntary advisory council to design  
17 a policy to assist communities in which a sex offender re-  
18 sides to plan and prepare for such a resident.

19 (b) COMPOSITION.—Each such advisory council shall  
20 include representation from—

- 21 (1) law enforcement;
- 22 (2) law enforcement organizations;
- 23 (3) local corrections agencies;
- 24 (4) victims groups; and
- 25 (5) other interested members of the public.

1 (c) DUTIES.—In developing a policy pursuant to sub-  
2 section (a), an advisory council should make recommenda-  
3 tions that include—

4 (1) the method of distributing community noti-  
5 fication information;

6 (2) methods of educating community residents  
7 at public meetings on how they can use such infor-  
8 mation to enhance their safety and the safety of  
9 their family;

10 (3) procedures for ensuring that community  
11 members are educated regarding the right of the sex  
12 offender not to be subjected to harassment or crimi-  
13 nal acts; and

14 (4) other matters the council considers nec-  
15 essary to ensure the effective and fair administration  
16 of the community notification law.

17 **SEC. 11. EXPUNGEMENT OF OUTDATED INFORMATION.**

18 In accordance with section 170101 of the Violent  
19 Crime Control and Law Enforcement Act of 1994, the de-  
20 partment required to coordinate the sex offender registra-  
21 tion program shall compile and update information re-  
22 garding the offenders. Any offender whose duty to register  
23 has expired or who has been relieved of the duty to register  
24 shall be removed from any public database.

1 **SEC. 12. EXCEPTIONAL CIRCUMSTANCES.**

2       Nothing in this Act shall be construed to prevent law  
3 enforcement officers from notifying members of the public  
4 of individuals that pose a danger under circumstances that  
5 are not described in section 170101 of the Violent Crime  
6 Control and Law Enforcement Act of 1994 or under this  
7 Act.

8 **SEC. 13. DEFINITIONS.**

9       For purposes of this Act:

10           (1) The term “criminal offense against a victim  
11 who is a minor” means any criminal offense that  
12 consists of—

13                   (A) kidnapping of a minor, except by a  
14 parent;

15                   (B) false imprisonment of a minor, except  
16 by a parent;

17                   (C) criminal sexual conduct toward a  
18 minor;

19                   (D) solicitation of a minor to engage in  
20 sexual conduct;

21                   (E) use of a minor in a sexual perform-  
22 ance;

23                   (F) solicitation of a minor to practice pros-  
24 titution;

25                   (G) any conduct that by its nature is a  
26 sexual offense against a minor; and

1 (H) an attempt to commit an offense de-  
 2 scribed in any of subparagraphs (A) through  
 3 (H) if the State—

4 (i) makes such an attempt a criminal  
 5 offense; or

6 (ii) chooses to include such an offense  
 7 in those which are criminal offenses  
 8 against a victim who is a minor for pur-  
 9 poses of this section.

10 For purposes of this paragraph, conduct which is  
 11 criminal only because of the age of the victim shall  
 12 not be considered a criminal offense if the perpetra-  
 13 tor is 18 years of age or younger.

14 (2) The term “sexually violent offense” means  
 15 any criminal offense that consists of aggravated sex-  
 16 ual abuse or sexual abuse (as described in sections  
 17 2241 and 2242 of title 18, United States Code, or  
 18 as described in the State criminal code) or an of-  
 19 fense that has as its elements engaging in physical  
 20 contact with another person with intent to commit  
 21 aggravated sexual abuse or sexual abuse (as de-  
 22 scribed in such sections of title 18, United States  
 23 Code, or as described in the State criminal code).

24 (3) The term “mental abnormality” means a  
 25 congenital or acquired condition of a person that af-

1       fects the emotional or volitional capacity of the per-  
2       son in a manner that predisposes that person to the  
3       commission of criminal sexual acts to a degree that  
4       makes the person a menace to the health and safety  
5       of other persons.

6           (4) The term “predatory” means an act di-  
7       rected at a stranger, or a person with whom a rela-  
8       tionship has been established or promoted for the  
9       primary purpose of victimization.

10      Any offense committed in another State, which if commit-  
11      ted in the State at issue would be one of the above enu-  
12      merated offenses, is considered a sexual offense for the  
13      purposes of this Act.

14           (5) The term “juvenile” has the meaning given  
15      such term under State law.

○